UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

gcp/kk

Mailed: April 27, 2006

Opposition No. 91161954
Opposition No. 91161955

Pabst Brewing Company

v.

Lone Star Steakhouse & Saloon, Inc.

George C. Pologeorgis, Interlocutory Attorney:

Notice of Default – Opposition No. 91161955

This case now comes up on applicant's motion (filed March 23, 2006) in Opposition No. 91161955 to set aside the notice of default entered in the aforementioned opposition proceeding. Opposer has filed a response to the motion.

The Board suspended the proceeding in Opposition No. 91161955 on January 25, 2005. On November 21, 2005, the Board issued an order resuming these proceedings and requiring applicant to file its answer within thirty days of said order. Applicant failed to do so. Accordingly, on January 24, 2006, the Board issued an order requiring applicant to show cause why judgment should not be entered

against applicant for failing to file a timely answer or to request an extension of time to answer.

In its March 23, 2006 filing, applicant contends that it never received the Board's November 21, 2005 order resuming these proceedings nor did it receive the Board's January 24, 2006 notice of default. Applicant claims that it was not until it conducted a status check on the TTAB website on March 21, 2006 that applicant became aware of the aforementioned Board orders.

The showing which has consistently been required by the Board and the courts in order to permit the late filing of an answer is that set forth in Fed. R. Civ. P. 55(c), i.e., good cause, and not the excusable neglect required by Rule 6(b)(2). *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.,* 21 USPQ2d 1556 (TTAB 1991). It is clear that applicant intends to defend itself in this proceeding, and that its failure to file a timely answer was due to the fact that it apparently never received the Board's November 21, 2005 resumption order. In view thereof, applicant has established the requisite "good cause" sufficient to justify an extension of time to file an answer. See also TBMP § 312.02 (2d ed. rev. 2004).

Accordingly, applicant has until ***thirty days*** from the mailing date of this order to file an answer to the notice of opposition in Opposition No. 91161955, failing which

judgment may be entered against applicant.[1] Furthermore, applicant must confirm its correct correspondence address for the Board's records.

Consolidation of Opposition Nos. 91161954 and 91161955

It has come to the attention of the Board that Opposition Nos. 91161954 and 91161955 involve the same parties and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. See, for example, Wright & Miller, Federal Practice and Procedure: Civil §2383 (2004); *Regatta Sport Ltd. v. Telux-Pioneer Inc.,* 20 USPQ2d 1154 (TTAB 1991) (Board's initiative).

Accordingly, the above-noted opposition proceedings are hereby consolidated and may be presented on the same record and briefs.

The Board file will be maintained in Opposition No. 91161954 as the "parent" case. The parties should no longer file separate papers (except for the answers) in connection with each proceeding. Only a single copy of each paper

[1] A copy of the Board's November 21, 2005 resumption order and January 24, 2006 show cause order are enclosed with applicant's copy of the instant order.

should be filed by the parties and each paper should bear the case captions as set forth above.[2]

In accordance with Board practice, discovery and trial dates are generally reset to conform to the dates latest set in the proceedings that are being consolidated. However, in this instance, since the answer in Opposition No. 91161955 is now be due after the close of discovery as reset in the latest filed proceeding, i.e, Opposition No. 91161955, discovery and trial dates of these now consolidated proceedings are hereby reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	**August 28, 2006**
30-day testimony period for party in position of plaintiff to close:	**November 16, 2006**
30-day testimony period for party in position of defendant to close:	**January 25, 2007**
15-day rebuttal testimony period for plaintiff to close:	**March 11, 2007**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

[2] The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. *See* Fed. R. Civ. P. 42(a).

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.